

## 7A Am. Jur. 2d Automobiles § 83

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### Automobiles and Highway Traffic

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### III. Licensing, Taxation, and Registration

#### A. Vehicles

##### 4. Collection, Disbursement, and Refund of Tax

## § 83. Refund of fees erroneously paid

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, Automobiles  50, 51, 102, 103

### Forms

[Am. Jur. Legal Forms 2d § 33:30 \(Application—For refund of registration fees erroneously paid\)](#)

Where motor vehicle license and registration fees are paid under protest, registration fees collected in excess of those prescribed by law should be refunded.<sup>1</sup> If the overpayment is made under pressure of severe statutory penalties or a disastrous effect upon one's business, such overpayment is "involuntary"; it may also be recovered to the extent that it is an overpayment.<sup>2</sup> A state is precluded from collecting registration fees in excess of the amount charged for a designated registration year, entitling a taxpayer to a refund of the amount improperly collected.<sup>3</sup>

### Caution:

Subjecting of the taxpayer to a misdemeanor conviction for nonpayment of tax does not make a payment involuntary, as is required for recovery of taxes under common-law refund theory, where the taxpayer had available the alternatives of a declaratory judgment

action or making payment “under protest.”<sup>4</sup> The “business compulsion” test requires a showing that the taxing statute imposes an onerous burden for nonpayment, which potentially deprives the taxpayer of the right to do business.<sup>5</sup>

A payer of erroneous fees generally is not entitled to a refund where payment of such fees was not coerced.<sup>6</sup> However, where the legislation under which a license tax has been collected is illegal and void, those who paid the license tax are entitled to a refund,<sup>7</sup> regardless of whether the payment was involuntary. Unless statutorily authorized, refunds generally are not subject to the addition of interest.<sup>8</sup>

**Practice Tip:**

In seeking a refund, the procedural requirements for presentation of tax refund claims must be observed.<sup>9</sup>

A state will not be allowed to remedy its collection of a tax on vehicles purchased out-of-state that is invalid under the Commerce Clause by imposing a similar tax retroactively against vehicles purchased in-state, because the state is unlikely to be able to collect the tax from a substantial percentage of owners of such vehicles; the only clear and certain remedy for the collection of such an invalid tax is a full refund to all who paid it.<sup>10</sup>

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Footnotes

- 1 Department of Motor Vehicles v. Greyhound Corp., 247 Md. 662, 234 A.2d 255 (1967); Fifth Ave. Coach Co. v. State, 73 Misc. 498, 131 N.Y.S. 62 (Ct. Cl. 1911).
- 2 People ex rel. Carpentier v. Treloar Trucking Co., 13 Ill. 2d 596, 150 N.E.2d 624 (1958).
- 3 Yellow Transp., Inc. v. State, 257 Mich. App. 602, 669 N.W.2d 553 (2003).
- 4 Private Truck Council of America, Inc. v. State, 128 N.H. 466, 517 A.2d 1150 (1986).
- 5 Texas Nat. Bank of Baytown v. Harris County, 765 S.W.2d 823 (Tex. App. Houston 14th Dist. 1988), writ denied, (July 12, 1989).
- 6 Com. v. Green Motor Lines, Inc., 208 Va. 100, 155 S.E.2d 38 (1967).
- 7 Devine v. Mantua Tp., Gloucester County, 28 N.J. Super. 299, 100 A.2d 563 (Law Div. 1953); *Private Truck Council of America, Inc. v. Oklahoma Tax Com'n*, 1990 OK 54, 806 P.2d 598 (Okla. 1990), cert. granted, judgment vacated on other grounds, 501 U.S. 1247, 111 S. Ct. 2882, 115 L. Ed. 2d 1048 (1991) and judgment reinstated, 1994 OK 96, 879 P.2d 137 (Okla. 1994).
- 8 Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006).
- 9 Dean v. State, 250 Kan. 417, 826 P.2d 1372 (1992); *State ex rel. Brady Motorfrate, Inc. v. State Tax Commission*, 517 S.W.2d 133 (Mo. 1974).

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[Department of Revenue v. Kuhnlein, 646 So. 2d 717 \(Fla. 1994\)](#), as clarified, (Nov. 30, 1994).  
As to the illegality of such a tax, see § 63.

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